

IC 6-8.1-8

Chapter 8. Collection

IC 6-8.1-8-1

Form of payment; receipt

Sec. 1. (a) A person may make a tax payment:

- (1) in cash;
- (2) by bank draft;
- (3) by check;
- (4) by cashier's check;
- (5) by money order;
- (6) by credit card, debit card, charge card, or similar method; or
- (7) if approved by the department, by an electronic fund transfer (as defined in IC 4-8.1-2-7).

However, if a tax liability payment is made by bank draft, check, cashier's check, or money order, the liability is not finally discharged and the person has not paid the tax until the draft, check, or money order has been honored by the institution on which it is drawn. If the payment is made by credit card, debit card, charge card, or similar method, the liability is not finally discharged and the person has not paid the tax until the department receives payment or credit from the institution responsible for making the payment or credit. The department may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the department or charged directly to the department's account, the department or credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the department by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

(b) The department shall issue a receipt for a tax payment that is made with currency.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.92-1987, SEC.10; P.L.71-1993, SEC.21; P.L.18-1994, SEC.41.

IC 6-8.1-8-1.5

Partial payment of tax

Sec. 1.5. Whenever a taxpayer makes a partial payment on the taxpayer's tax liability, the department shall apply the partial payment in the following order:

- (1) To any penalty owed by the taxpayer.
- (2) To any interest owed by the taxpayer.
- (3) To the tax liability of the taxpayer.

As added by P.L.26-1985, SEC.15.

IC 6-8.1-8-2

Judgments arising from liens

Sec. 2. (a) Except as provided in IC 6-8.1-5-3, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes the tax before the department issues a tax warrant. The demand notice must state the following:

- (1) That the person has ten (10) days from the date the department mails the notice to either pay the amount demanded or show reasonable cause for not paying the amount demanded.
- (2) The statutory authority of the department for the issuance of a tax warrant.
- (3) The earliest date on which a tax warrant may be filed and recorded.
- (4) The remedies available to the taxpayer to prevent the filing and recording of the judgment.

If the department files a tax warrant in more than one (1) county, the department is not required to issue more than one (1) demand notice.

(b) If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10%) of the unpaid tax is added to the total amount due.

(c) When the department issues a tax warrant, it may not file the warrant with the circuit court clerk of any county in which the person owns property until at least twenty (20) days after the date the demand notice was mailed to the taxpayer. The department may also send the warrant to the sheriff of any county in which the person owns property and direct the sheriff to file the warrant with the circuit court clerk:

- (1) at least twenty (20) days after the date the demand notice was mailed to the taxpayer; and
- (2) no later than five (5) days after the date the department issues the warrant.

(d) When the circuit court clerk receives a tax warrant from the department or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record, listing the following:

- (1) The name of the person owing the tax.
- (2) The amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.
- (3) The date the warrant was filed with the clerk.

(e) When the entry is made, the total amount of the tax warrant becomes a judgment against the person owing the tax. The judgment creates a lien in favor of the state that attaches to all the person's interest in any:

- (1) chose in action in the county; and
- (2) real or personal property in the county;

excepting only negotiable instruments not yet due.

(f) A judgment obtained under this section is valid for ten (10) years from the date the judgment is filed. The department may renew the judgment for additional ten (10) year periods by filing an alias tax warrant with the circuit court clerk of the county in which the judgment previously existed.

(g) A judgment arising from a tax warrant in a county may be released by:

- (1) the department or by the county sheriff after the judgment, including all accrued interest to the date of payment, has been fully satisfied; or
- (2) the department if the department determines that the tax assessment or the issuance of the tax warrant was in error.

(h) If the department determines that the filing of a tax warrant was in error, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the warrant was filed. The department shall mail the release as soon as possible but no later than seven (7) days after:

- (1) the determination by the department that the filing of the warrant was in error; and
- (2) the receipt of information by the department that the judgment has been recorded under subsection (d).

(i) If the department determines that a judgment described in subsection (h) is obstructing a lawful transaction, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the judgment was filed immediately upon making the determination.

(j) A release issued under subsection (h) or (i) must state that the filing of the tax warrant was in error. Upon the request of the taxpayer, the department shall mail a copy of a release issued under subsection (h) or (i) to each major credit reporting company located in each county where the judgment was filed.

(k) The commissioner shall notify each state agency or officer supplied with a tax warrant list of the issuance of a release under subsection (h) or (i).

(l) If the sheriff collects the full amount of a tax warrant, the sheriff shall disburse the money collected in the manner provided in section 3(c) of this chapter and then release the judgment. If a judgment has been partially or fully satisfied by a person's surety, the surety becomes subrogated to the department's rights under the judgment and the sheriff may not release the judgment until the surety's rights under the judgment have been satisfied by the person. If a sheriff releases a judgment:

- (1) before the judgment is fully satisfied;
- (2) before the sheriff has properly disbursed the amount collected; or
- (3) after the sheriff has returned the tax warrant to the department;

the sheriff commits a Class B misdemeanor and is personally liable for the part of the judgment not remitted to the department.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.332-1989(ss), SEC.29; P.L.71-1993, SEC.22; P.L.18-1994, SEC.42; P.L.129-2001, SEC.22.

IC 6-8.1-8-3

Judgments arising from tax warrants; collection

Sec. 3. (a) The county sheriff of a county shall attempt to levy on and collect a judgment arising from a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment lien plus the accrued interest to the date of the payment. Subject to subsection (b), the sheriff shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for judgments arising from tax warrants.

(b) A sheriff shall sell property to satisfy a tax warrant in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale. A sheriff may engage an auctioneer to advertise a sale and to conduct a public auction, unless the person being levied files an objection with the clerk of the circuit or superior court having the tax warrant within five (5) days of the day that the sheriff informs the person of the person's right to object. The advertising conducted by the auctioneer is in addition to any other notice required by law, and shall include a detailed description of the property to be sold. When an auctioneer is engaged under this subsection and the auctioneer files a verified claim with the clerk of the circuit or superior court with whom the tax warrant is filed, the sheriff may pay the reasonable fee and reasonable expenses of the auctioneer from the gross proceeds of the sale before other expenses and the judgment arising from the tax warrant are paid. As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

(c) The sheriff shall deposit all amounts that the sheriff collects under this section, including partial payments, into a special trust account for judgments collected that arose from tax warrants. On or before the fifth day of each month the sheriff shall disburse the money in the tax warrant judgment lien trust account in the following order:

(1) The sheriff shall pay the department the part of the

collections that represents taxes, interest, and penalties.

(2) The sheriff shall pay the county treasurer and the clerk of the circuit or superior court the part of the collections that represents their assessed costs.

(3) Except as provided in subdivision (4), the sheriff shall keep the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

(4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

The department shall establish the procedure for the disbursement of partial payments so that the intent of this section is carried out.

(d) After the period described in subsection (a) has passed, the sheriff shall return the tax warrant to the department. However, if at the end of this period the sheriff is in the process of collecting the judgment arising from a tax warrant in periodic payments of sufficient size that the judgment will be fully paid within one (1) year after the date the judgment was filed, the sheriff may keep the tax warrant and continue collections. When the tax warrant is returned, the department may exercise its collection powers alone, or it may allow the sheriff to continue collections in conjunction with the department. If the department and the sheriff engage in simultaneous collection efforts, the sheriff may retain for disbursement under subsection (c) only the part of the ten percent (10%) collection fee that is applicable to the part of the collections for which the sheriff is responsible. The department shall retain the rest of the collection fee.

(e) Notwithstanding any other provision of this chapter, the department may order a sheriff to return a tax warrant at any time, if the department feels that action is necessary to protect the interests of the state.

(f) This subsection applies only to the sheriff of a county having a consolidated city or a second class city. In such a county, the ten percent (10%) collection fee added under section 2(b) of this chapter shall be divided as follows:

(1) The sheriff may retain for disbursement under subsection (c) forty thousand dollars (\$40,000), plus one-fifth (1/5) of any fees exceeding that forty thousand dollar (\$40,000) amount.

(2) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the sheriff's department's pension trust fund.

(3) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the county general fund.

As added by Acts 1980, P.L.61, SEC.1. Amended by Acts 1982, P.L.65, SEC.1; P.L.32-1983, SEC.3; P.L.46-1991, SEC.8; P.L.1-1993, SEC.44; P.L.83-1993, SEC.1; P.L.1-1994, SEC.32; P.L.129-2001, SEC.23.

IC 6-8.1-8-4

Judgment arising from tax warrant; collection by department; special counsel

Sec. 4. (a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

- (1) an unsatisfied warrant has been issued by the department; or
- (2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.332-1989(ss), SEC.30; P.L.71-1993, SEC.23; P.L.129-2001, SEC.24.

IC 6-8.1-8-5

Restraining order

Sec. 5. At any time after a judgment arising from a tax warrant has been recorded, the department may obtain a court order restraining the person owing the tax from conducting business in Indiana. The restraining order is valid as long as the judgment remains in effect, but the department may have the order dissolved if it feels that by dissolving the order the judgment will be easier to collect.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.129-2001, SEC.25.

IC 6-8.1-8-6

Receivership; court order; appeal

Sec. 6. (a) If a person does not pay a tax payment within sixty (60) days of the date that the particular payment is due, the department may have a receiver appointed by the circuit or superior court of the county in which the taxpayer resides or is domiciled. Upon motion by the department for a receiver, the court shall appoint a receiver if the court finds that one of the listed taxes is due and has not been paid within sixty (60) days of its due date. A receiver appointed under this section may, in place of the taxpayer:

- (1) bring and defend any action;
- (2) take possession of all property;
- (3) receive all funds;

- (4) collect any debts owed to the taxpayer; and
- (5) perform all other functions and duties prescribed for receivers under Indiana law or under special authority granted by the court.

(b) Within ten (10) days after the court order granting or refusing a receiver's appointment, either party may appeal the order to the tax court. However, if the taxpayer makes the appeal, he must furnish bond in an amount sufficient to cover the payment of any costs or damages resulting from the appeal and to cover the amount of the bond the receiver would be required to file. As long as the appeal is in process, the receiver's powers are suspended.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.291-1985, SEC.11.

IC 6-8.1-8-7

Remedies cumulative

Sec. 7. The remedies for tax collection provided to the department under this chapter are cumulative and the selection or use of one (1) of the remedies does not preclude the subsequent or corresponding use of one (1) or more of the other remedies.

As added by Acts 1980, P.L.61, SEC.1.

IC 6-8.1-8-8

Uncollected tax warrants; action by department

Sec. 8. After a tax warrant becomes a judgment under section 2 of this chapter or a tax warrant is returned uncollected to the department under section 3 of this chapter, the department may take any of the following actions without judicial proceedings:

- (1) The department may levy upon the property of the taxpayer that is held by a financial institution by sending a claim to the financial institution. Upon receipt of a claim under this subdivision, the financial institution shall surrender to the department the taxpayer's property. If the taxpayer's property exceeds the amount owed to the state by the taxpayer, the financial institution shall surrender the taxpayer's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the taxpayer has on deposit or subsequently deposits, in an amount not to exceed the amount owed.
- (2) The department may garnish the accrued earnings and wages of a taxpayer by sending a notice to the taxpayer's employer. Upon receipt of a notice under this subdivision, an employer shall garnish the accrued earnings and wages of the taxpayer in an amount equal to the full amount that is subject to garnishment under IC 24-4.5-5. The amount garnished shall be remitted to the department. The employer is entitled to a fee in an amount equal to the fee allowed under IC 24-4.5-5-105(5). However, the fee shall be borne entirely by the taxpayer.
- (3) The department may levy upon and sell property and may:

(A) take immediate possession of the property and store it in a secure place; or

(B) leave the property in the custody of the taxpayer; until the day of the sale. The department shall provide notice of the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the property is left in the custody of the taxpayer, the department may require the taxpayer to provide a joint and several delivery bond, in an amount and with a surety acceptable to the department. At any time before the sale, any owner or part owner of the property may redeem the property from the judgment by paying the department the amount of the judgment. The proceeds of the sale shall be applied first to the collection expenses and second to the payment of the delinquent taxes and penalties. Any balance remaining shall be paid to the taxpayer.

As added by P.L.23-1986, SEC.14. Amended by P.L.53-1987, SEC.2; P.L.3-1990, SEC.26; P.L.71-1993, SEC.24; P.L.129-2001, SEC.26.

IC 6-8.1-8-8.5

Enforceability of judgment arising from tax warrant

Sec. 8.5. (a) For purposes of this chapter, a judgment arising from a tax warrant is enforceable in the same manner as any judgment issued by a court of general jurisdiction.

(b) The department may initiate proceedings supplementary to execution in any court of general jurisdiction in a county in which a judgment arising from a tax warrant has been recorded.

(c) Proceedings supplementary to execution on a judgment arising from a tax warrant must be initiated and maintained under the applicable rules of the selected court and under the provisions of IC 34-55-8 that do not conflict with this chapter.

As added by P.L.129-2001, SEC.27.

IC 6-8.1-8-9

Levy release or tax warrant surrender; grounds

Sec. 9. (a) This section does not apply to a jeopardy tax warrant issued under IC 6-8.1-5-3.

(b) The department shall release a levy on property or request the sheriff to surrender a tax warrant to the department if:

(1) the expense of the sale process exceeds the liability for which the levy is made;

(2) the proceeds of the sale would not reduce the tax liability by the lesser of:

(A) ten percent (10%) of the liability; or

(B) one thousand dollars (\$1,000); or

(3) the advocate, appointed under IC 6-8.1-11-3, orders:

(A) the release of the levy; or

(B) the return of the tax warrant by the sheriff;

upon submitting a written finding to the commissioner that the levy threatens the health or welfare of the taxpayer or the taxpayer's spouse, family, or dependents.

As added by P.L.332-1989(ss), SEC.31.

IC 6-8.1-8-10

Bank charges incurred through erroneous levy; reimbursement

Sec. 10. (a) As used in this section, "bank charges" includes:

- (1) a financial institution's customary charge for complying with an instruction in a levy; and
- (2) reasonable charges for overdrafts that are a direct consequence of the erroneous levy;

that are paid by the taxpayer and not waived or reimbursed by the financial institution.

(b) A taxpayer may file a claim for reimbursement with the department for bank charges incurred by the taxpayer as a result of an erroneous levy under this chapter.

As added by P.L.332-1989(ss), SEC.32.

IC 6-8.1-8-11

Filing claim for reimbursement

Sec. 11. A claimant for reimbursement under section 10 of this chapter must file a claim:

- (1) with the department;
- (2) on a form prescribed by the department; and
- (3) not later than ninety (90) days after the date of the levy.

As added by P.L.332-1989(ss), SEC.33.

IC 6-8.1-8-12

Claim approval

Sec. 12. (a) The department shall approve a claim filed under section 11 of this chapter if the department determines that:

- (1) the erroneous levy was caused by an error by the department;
- (2) before the levy was issued:
 - (A) the taxpayer responded to communications by the department; and
 - (B) the taxpayer provided the department with the information and documentation requested by the department.

(b) The department shall waive the requirement set forth in subsection (a)(2) if the department determines the taxpayer had reasonable cause for a failure to comply with the requirement.

As added by P.L.332-1989(ss), SEC.34.

IC 6-8.1-8-13

Response to claim; denial; notice

Sec. 13. The department shall respond to a claim filed under section 11 of this chapter no later than thirty (30) days after the claim was filed. If the department denies the claim, the department shall notify the taxpayer in writing of the reasons for the denial of the claim.

As added by P.L.332-1989(ss), SEC.35.